



ARKANSAS JUDICIARY

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## Rule 78. Motion Day And Hearings On Motions.

(a) Motion Day. Unless local conditions make it impracticable, each court shall establish regular times, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the court at any time and on such notice as is reasonable, may make orders for the advancement, conduct and hearing of such motions.

(b) Motions, Responses, and Replies. The form and content of motions, responses, and replies are governed by Rule 7(b). The timing of motions, responses, and replies is governed by Rule 6(c).

(c) Hearing; Waiver. The court, upon notice to all parties, may hold a hearing on a motion only after the time for reply has expired; however, the court may hear a proper ex parte motion at any time. Unless a hearing is requested by counsel or is ordered by the court, a hearing will be deemed waived and the court may act upon the matter without further notice after the time for reply has expired.

(d) Mandamus and Prohibition. Upon the filing of petitions for writs of mandamus or prohibition in election matters, it shall be the mandatory duty of the circuit court having jurisdiction to fix and announce a day of court to be held no sooner than 2 and no longer than 7 days thereafter to hear and determine the cause.

Reporter's Notes to Rule 78: - 1. Rule 78 differs considerably from FRCP 78. Under the latter, the federal courts are given broad discretion to formulate their own local rules concerning the disposition of motions. Thus, there is no requirement of uniformity of rules. This rule, however, tracks prior Arkansas law in an attempt to insure uniformity in the method of hearing and deciding motions.

2. Under this rule, courts are not required to conduct motion days if local conditions make them impractical. This is a change from prior law as superseded Ark. Stat. Ann. 27-1724 (Repl. 1962) required a motion day to be held on the first day of each term. Motion days are thus permissive under this rule whereas they were mandatory under prior Arkansas law.

3. Sections (b) and (c) of this rule are slightly modified versions of sections (b), (c), (d) and (e) of Rule 2 of the Uniform Rules for Circuit and Chancery Courts in this State. The idea is to have uniformity in the area of motions and Rule 2 of the Uniform Rules largely achieved this goal. Hence, its provisions are carried forwarded [forward] in Rule 78.

Additions to Reporter's Notes, 1984 Amendments: - Rule 78(b) is amended by adding the last sentence of the subsection to assure that no court will consider it necessary to grant a frivolous motion even though there has been no response to the motion.

Court's Notes, 1995 Amendment: - Subsection (d) is added to modify the effect of Act 582, 1,

of 1991 which amended Ark. Code Ann. 16-115-104 (Supp. 1993). Act 582 increased the time to hear writs of prohibition and mandamus to 45 days. The Court has concluded that the abbreviated procedure formerly prescribed in Ark. Code Ann. 16-115-104 is necessary in election matters because of their urgency.

Addition to Reporter's Notes, [February] 2001 Amendment: - The title of subdivision (b) has been changed - from "Briefs" to "Motions, responses and briefs" - to more accurately reflect its contents. Also, a new sentence has been added at the end of the subdivision excepting summary judgment motions and responses from its time frames. As amended in 2001, Rule 56(c) governs the timing of motions and responses under that rule.

Addition to Reporter's Notes, [May] 2001 Amendment: - Subdivision (d) has been deleting the words "judge or chancellor" and replacing them with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

Addition to Reporter's Notes, 2002 Amendment: - The provisions of subdivision (b) have been deleted and replaced with cross-references to Rule 6(c), which now governs the timing of motions, responses, and replies, and to Rule 7(b), which now governs their content. Under the new first sentence of subdivision (c), the court may not hold a hearing on a motion, except one that may properly be heard ex parte, until the time for reply has expired. A similar provision was added to Rule 56(c), which applies to motions for summary judgment, in 2001. The title of subdivision (c) has been revised to make plain that it does not refer simply to waiver of hearings, and stylistic changes have been made in subdivision (d).

### **History Text:**

History. Amended July 9, 1984, effective September 1, 1984; amended November 13, 1995; amended February 1, 2001; amended May 24, 2001, effective July 1, 2001; amended January 24, 2002

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

IX. Circuit Courts and Clerks

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